

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Applications for Consent)
To the Transfer of Control of Licenses and)
Section 214 Authorizations from)
TELE-COMMUNICATIONS, INC.,)
Transferor,)
to)
AT&T CORP.,)
Transferee.)

CS Docket No. 98-178

To: The Commission

COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Qwest Communications Corporation ("Qwest"), by its attorneys, hereby submits the following comments in support of the Motion of U S West to Expedite Ruling on Motion to Require Applicants to Provide Interested Parties with Access to Hart-Scott-Rodino Documents filed on December 7, 1998 in connection with the above-captioned proceeding. Specifically, U S West has requested that the Commission expedite its ruling on the pending motion filed by SBC Communications Inc. ("SBC") to require Tele-Communications, Inc. ("TCI") and AT&T Corporation ("AT&T") (together, the "Applicants") to submit for public inspection and comment (subject to appropriate protective arrangements) all documents submitted to the Department of Justice in connection with its Hart-Scott-Rodino review.

In comments filed in this proceeding on October 29, 1998, Qwest also urged the Commission to require the applicants to provide to the Commission and submit for public review

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and comment all HSR materials submitted to DOJ in connection with the proposed merger.

Qwest stated then its belief, supported by Commission precedent, that a thorough public interest analysis of the effects of the merger demands an examination of the business plans and other documents included in those HSR materials.¹ Qwest now understands that the Applicants have made the HSR documents available to the Commission, but that the Commission intends to allow interested parties to review *only* those documents it has relied on in its decision regarding the merger, and only *after* its decision has been made.

Qwest respectfully submits that, as the Commission consistently has emphasized, it cannot act on a proposed transfer of control without *first* allowing for review of and comment on *all* relevant information by all interested parties.² Specifically, in this proceeding, the public interest will not be served unless the Commission permits the parties to review all of the HSR documents filed with the Commission -- not just those documents the Commission deems to be important or relevant -- so that the parties may evaluate and comment on all of the available relevant material related to the applications. Only in this manner can the parties make independent and thorough evaluations of the effects of the merger, and hence contribute to the creation of a complete and accurate record on which the Commission may base its ultimate decision.

Indeed, the Commission has put this policy into practice in the last three major mergers it has reviewed. As both SBC and U S West have explained, there is no rational basis for failing to do the same with respect to this merger. And, further, a decision to treat the AT&T/TCI merger

¹ See Comments of Qwest Communications Corporation, CS Docket No. 98-178, at 16-18.


² See Motion of U S West at 3, *citing Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, ¶ 33 (rel. Aug. 4, 1998).

differently from the other most recent major mergers, and not to make the HSR materials available for review and comment, almost certainly would constitute reversible error.³

For the foregoing reasons, Qwest urges the Commission to grant U S West's motion for expedited review of the pending motion filed by SBC to require the Applicants to submit for public review and comment, subject to appropriate protective arrangements, all HSR materials produced in connection with the above-referenced merger proceeding.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION

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December 15, 1998

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³ See Motion of U S West at 3, citing *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965); *Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1995).

CERTIFICATE OF SERVICE

I, Rebekah J. Kinnett, hereby certify that on this 15th day of December, 1998 copies of the foregoing Comments of Qwest Communications Corporation were served by hand on the following:

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